



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

PERFORMANCE AUDIT

# *State Real Property Management*

*Department of Natural Resources and  
Conservation  
Department of Administration*

AUGUST 2015

LEGISLATIVE AUDIT  
DIVISION

14P-07

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**PERFORMANCE AUDITS**

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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August 2015

The Legislative Audit Committee  
of the Montana State Legislature:

This is our performance audit of State Real Property Management. This report presents audit findings and includes recommendations addressing the accuracy and maintenance of the inventory of state-owned non-trust property; the processes followed for acquiring and disposing of real property; and the further development of a comprehensive real property management strategy. Written responses from the Department of Natural Resources and Conservation staff and Department of Administration staff are included at the end of the report.

We wish to express our appreciation to staff of the Department of Natural Resources and Conservation, the Department of Administration, and numerous other state agencies for their cooperation and assistance throughout the audit.

Respectfully submitted,

*/s/ Tori Hunthausen*

Tori Hunthausen, CPA  
Legislative Auditor



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## ELECTED, APPOINTED, AND ADMINISTRATIVE OFFICIALS

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# MONTANA LEGISLATIVE AUDIT DIVISION

## PERFORMANCE AUDIT

### State Real Property Management

Department of Natural Resources and Conservation

Department of Administration

AUGUST 2015

14P-07

REPORT SUMMARY

The State of Montana does not have a comprehensive, accurate inventory of its non-trust real property holdings. A more centralized process for real property transactions, and a stronger centralized real property management strategy, would make the state's management of this strategic asset more efficient and effective.

### Context

The State of Montana's extensive real property holdings, found in every county in the state, total several million acres. While the vast majority of this land is held in trust and managed to benefit common schools and other specific beneficiaries, the state owns non-trust real estate for a number of other specific purposes as well. These purposes include highway construction and maintenance, wildlife habitat and conservation, environmental remediation, higher education, and the general day-to-day operation of state government across multiple agencies.

Our review looked at the statutorily required inventory of non-trust real property and how it is maintained and updated. We reviewed other sources of real property inventory information, as well as several agency-specific lists provided by the agencies themselves. We also examined the processes for the acquiring and disposing of real property, and how the state manages its entire portfolio of land across Montana.

Unlike other performance audits that examine specific programs or divisions, this project touched on a number of different agencies, as many agencies own real property for unique

reasons, and nearly every agency owns and manages real property in some capacity.

### Results

Our audit found that the real property inventory required by statute is incomplete and inaccurate, and that staff at state agencies are generally unaware of the inventory and their responsibilities to help maintain it. We also found there is no consistent process for the acquiring and disposing of real property, and that while there are some statutory indications of a real property management strategy, the state could do more to provide comprehensive management of a strategic asset belonging to the people of Montana and worth many hundreds of millions of dollars.

Our report includes four recommendations, including:

- ♦ The agency charged with maintaining the non-trust real property inventory prioritize the completion and accuracy of the inventory,
- ♦ The legislature consider the centralization of real property transaction services,

- ♦ The legislature consider authorizing the development and implementation of a more comprehensive real property management strategy, and
- ♦ The agency tasked with providing to the legislature and the budget office an accounting of all space utilized by state agencies broaden its biennial report to include space owned by the state and not just leased space.

Recommendation Concurrence	
Concur	1
Partially Concur	1
Do Not Concur	0
<b>Source: Agency audit response included in final report.</b>	

For a complete copy of the report (14P-07) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to [lad@mt.gov](mailto:lad@mt.gov); or check the web site at <http://leg.mt.gov/audit>  
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# Chapter I – Introduction

## **Introduction**

From the date of the federal Enabling Act of 1889 that provided a path for statehood more than a century ago, Montana has owned real property. Today the state of Montana's real property holdings total several million acres. The vast majority of this land is held in trust by the state, managed by the Department of Natural Resources and Conservation (DNRC) for the benefit of common schools and other specific beneficiaries. Of the remaining acres of non-trust land, most is owned by the Department of Fish, Wildlife & Parks (FWP). Other major land-owning agencies include the Montana University System and the Department of Corrections. The Montana Department of Transportation (MDT) owns thousands of acres as well, primarily as right-of-way that was acquired for various road projects, although the agency also owns maintenance and administrative land in locations across the state. Other agencies have much smaller real property portfolios, but nonetheless face decisions on such questions as when to buy land and build a building versus leasing space from the private sector, and when a piece of real property may have outlived its usefulness as a state holding and should be disposed of in the name of economic and efficient operation of state government.

Unlike other audit projects that examine specific, singular programs or divisions, there are many facets to state real property management, a responsibility that touches nearly every state agency. Land management is at the heart of the missions of some agencies, including the DNRC (formerly the Department of State Lands), FWP, and, to a lesser extent, MDT. Several other state agencies own and manage real property, though this is not at the core of their missions.

## **Authority Over Real Property Transactions**

The Board of Land Commissioners (Land Board) exercises general authority over the acquisition and disposal of state real property, although state law grants some agencies exemptions from Land Board oversight in certain situations. The Transportation Commission, Fish and Wildlife Commission, and to a lesser extent, Department of Administration, also have some authority over state-owned real property. Because so many agencies have various reasons for acquiring, holding, and disposing of real property, the laws governing real property transactions and management can be found in multiple titles of Montana Code.

## **Audit Scope**

Real property is generally defined to mean land and anything attached to the land, including buildings or other structures but also including rights or interests. Structures

or other improvements must be immovable and attached to the land in order to be considered real property. Our audit focused primarily on land management by the state, although by design, much of the land owned or contemplated for purchase or sale by the state includes improvements that would also be considered real property. By comparison, personal property includes everything from vehicles to office equipment and computer systems.

For much of the audit work we further defined the type of real property in which we were most interested. While state agencies own real property for many different purposes, our main focus was on what we considered to be “administrative” property, or real property used in the general day-to-day operation of state government and not managed to generate revenue for beneficiaries. This could include office buildings for state workers, customer-oriented facilities open to the public, parking lots, and other real property used for the daily operations of multiple government functions.

With this definition in place, the scope of our audit was developed by determining which aspects of real property management provide the most opportunity for increasing accuracy and efficiency of inventory maintenance, transaction services, and general real property management strategy.

Specifically, the audit examined:

- ♦ The statutorily mandated inventory of state-owned non-trust real property, which by law consists of a filing system and index; other lists of real property centrally maintained for various purposes; and lists of agency-owned real property provided by a sample of agencies. These agencies were the Department of Administration, Department of Environmental Quality, Department of Labor and Industry, Department of Military Affairs, Department of Public Health and Human Services, Department of Transportation, Montana State University, and the University of Montana. These agencies were selected because they each own real property in varying amounts, but none have real property management as a core element of the mission of the agency.
- ♦ Non-trust real property transactions by the same sample of state agencies from the past 10 years.
- ♦ Legislation from recent sessions for evidence of legislative approval of real property acquisitions, as well as recent editions of the Long-Range Building Program from the executive budget.
- ♦ The Montana Constitution, State law, administrative rules, and other internal agency policies as they reference and govern real property acquisitions, disposals, and management. These sources were also examined for any guidance related to real property management strategy, either within a particular agency or providing for a centralized authority to administer.

## Scope Exclusions

Our risk assessment process resulted in the decision to exclude certain aspects of real property management from the scope of this audit. In some cases these areas have been examined in previous audits, while other related topics may be worthy of consideration for future performance audits. Specifically, those aspects of state-owned real property and real property management beyond the scope of this audit include:

- ◆ Trust lands managed by the DNRC.
- ◆ Right-of-Way lands owned by the MDT.
- ◆ Personal property (vehicles, office equipment, etc.) owned and managed by state agencies.
- ◆ The inventory of lands owned by the FWP. Note: Certain FWP real property transactions were examined for compliance with statute and policy, and FWP transaction process and management strategy were considered as criteria for portions of the audit.

## Audit Objectives and Methodology

Risk assessment work and the establishment of the scope of this audit led to the development of the following audit objectives:

1. Is there a singular, accurate inventory of all non-trust real property owned by the State of Montana?
2. Do state agencies regularly follow all applicable laws, rules, policies, and procedures in conducting their real property transactions?
3. Is there a singular statewide real property management plan, and if not, is such a plan warranted for the government-wide management of a strategic asset like real property?

To address these objectives, we performed the following types of methodologies:

- ◆ Reviewed sources of criteria (including other states, federal government reports, and industry best practices) for significant elements related to real property management.
- ◆ Reviewed Montana's Constitution, statutes, rules, and other materials related to real property inventory and management.
- ◆ Conducted structured interviews with staff at several agencies with real property management responsibilities.
- ◆ Reviewed Land Board and Board of Regents meeting minutes for evidence of discussion and approval of real property transactions.
- ◆ Reviewed files at eight agencies to cover 10 years' worth of real property acquisitions and disposals (a total of 30 transactions).

- ♦ Compared state-wide non-trust real property inventory with inventory lists provided by various agencies, as well as other sources of real property holding information.
- ♦ Researched best practices in real property management by other states and federal entities.
- ♦ Conducted structured interviews with real estate staff in other states for comparison to Montana practices.

### **Issue for Further Study**

Our work with the Orion real property database at the Department of Revenue, and some of the issues that arose with both the challenges of compiling a list of state-owned property from Orion as well as the tax status codes assigned to properties that should be exempt from property tax, suggested further audit work may be warranted in the future in the area of the recording of exempt property and its tax status across Montana.

### **Report Organization**

The remainder of this report details our analysis of the objectives and contains four recommendations. It is organized in three additional chapters, each addressing one of the objectives.

- ♦ Chapter II – Inventory of State-Owned Real Property
- ♦ Chapter III – Real Property Transaction Services and Oversight
- ♦ Chapter IV – Real Property Management Strategy

## Chapter II – Inventory of State-Owned Real Property

### **Introduction**

An effective strategy for managing real property, or any strategic asset, starts with having an accurate inventory of the assets under management. If inaccurate or incomplete data leaves an organization with a poor perspective on its real property holdings, the organization may be overlooking opportunities to be more effective and efficient by putting its real property to more beneficial use, or, if it's not needed any longer, disposed of. In addressing this audit objective, we analyzed the statutorily mandated inventory of non-trust real property and compared that list with other inventory lists provided by other agencies. We determined that the required inventory is inaccurate and incomplete.

### **Non-Trust Inventory Required by Statute**

In 1987, statute was enacted giving the responsibility of maintaining an inventory of non-trust state lands to the Department of Natural Resources and Conservation (DNRC), then known as the Department of State Lands (§77-1-701). At that time, the Secretary of State was directed to transfer all ownership records on file, with certain specific exceptions, to DNRC. (Records for lands held or administered by the Montana Department of Transportation (MDT) for highway rights-of-way were to be sent directly to the Department of Transportation.) DNRC was then to transfer all other ownership records, “other than those of state lands,” to the agency administering the interest or property described in the records.

Once these transfers were complete, agencies were required to file with DNRC the ownership records of state lands held by the agency. DNRC's role is to provide a “secure yet accessible” repository for the ownership records of state land. This is to include all lands with maintenance buildings attached used by MDT.

Further, statute requires DNRC to develop a filing system/index for certain information on state lands, including legal description; acquisition/disposal dates; name of the administering agency; and grantor or grantee. The agency was further directed to verify accuracy of records and perfect titles, “to the extent feasible within available funding and personnel.”

As directed by state law, DNRC developed administrative rules for the creation and maintenance of this inventory of non-trust state lands. The rules provide that:

- ♦ State agencies will file with DNRC all records of lands held, disposed of, or purchased by the agency.
- ♦ DNRC will make available to each agency a copy of that agency's land ownership *no more than* once a year (emphasis added).
- ♦ Agencies have 60 days from the acquisition or disposal of a piece of land to provide DNRC with records of the transaction. The agency is also required to fill out a form provided by DNRC that includes the property's legal description; transaction date; administrating agency; grantor or grantee; and records for subsurface and mineral rights. DNRC may ask for the information in electronic/database form instead of on a paper form. It's up to the agency to make sure the deeds are recorded in the appropriate county and to inform DNRC of any inaccuracies/discrepancies they are aware of in the records.

## **DNRC Inventory**

At our request, DNRC provided its inventory of non-trust state property. The inventory was provided to us in the form of a spreadsheet. At the time of this conversation, DNRC staff acknowledged that compiling and confirming all of the state's non-trust holdings is an ongoing project for the agency, and that the statutorily-mandated index and filing system were not complete.

In an interview, DNRC staff said the agency has historically done a poor job maintaining and making available to other agencies and the public the non-trust inventory. Prior to late 2012, paper records of non-trust land were kept in file boxes, which made finding records for specific parcels a time-consuming challenge. At the outset of the audit the agency had begun the process of sorting through file boxes of property records and placing them in file cabinets, with file numbers attached and cross-referenced to the spreadsheet. This job was admittedly not complete when we visited DNRC.

The spreadsheet inventory included 2,603 separate entries. However, upon review we determined not every entry should be counted toward an inventory list of parcels, and some parcels known to be owned by the state did not appear in the inventory. The following list provides some examples of inaccuracies in the number of parcels shown in the inventory:

- ♦ The inventory includes a number of entries for parcels that are labeled as having been disposed of—and includes disposal dates for those parcels. These would not belong in a current inventory of state-owned property.
- ♦ The inventory also includes properties that are leased from private owners, which would not be parcels owned by the state by fee simple.
- ♦ Approximately 1,400 of the entries name "DNRC Water" or "DNRC Water Board" as the administrating agency. A search for a sample of these parcels in the Cadastral mapping program (which draws its information from the



Department of Revenue's Orion property database) indicates that some of these parcels appear to be DNRC trust lands and thus should not be included. Many others are labeled "ESMT" (easement) and/or "canal" in the spreadsheet and thus should not appear on a list of owned state land, per statute. Removing these entries from consideration leaves approximately 1,200 entries in the spreadsheet.

- ♦ Only one parcel showing the Department of Fish, Wildlife & Parks (FWP) as the administrative agency appears on the spreadsheet. In fact, FWP is the owner of more non-trust acreage than any other state agency. In an interview, a DNRC official told us that FWP is not included in the non-trust inventory spreadsheet because the agency provides to DNRC its biennial Land Book, which includes the same required information about all of its real property holdings. After meeting with FWP officials as part of this and other audit objectives, we felt a reasonable level of confidence in the accuracy of FWP's inventory of its own holdings. Per administrative rule, DNRC could ask FWP for its real property information in electronic form, to more easily integrate it into the statewide non-trust inventory.

Audit work did not include a complete line-by-line examination of the non-trust inventory, as the objective was not to find and correct every discrepancy. However, even these higher-level observations were sufficient to determine the accuracy (or lack thereof) of the non-trust inventory, before comparisons with other inventory lists and before drilling into more agency-specific entries and determining whether DNRC's inventory matched those provided by selected agencies.

### **Agency-Specific Inventories Do Not Match DNRC List**

We selected eight state agencies for further study when examining non-trust real property inventories and transactions. These agencies were chosen because while they own real property assets in varying amounts, owning and managing real property is not the main mission of the agencies. These agencies were the Department of Administration (DOA), Department of Environmental Quality (DEQ), Department of Labor and Industry (DLI), Department of Military Affairs (DMA), Department of Public Health and Human Services (DPHHS), Montana Department of Transportation (MDT), Montana State University (MSU), and the University of Montana (UM). We interviewed staff with all eight agencies to learn how they manage real property assets.

The eight agencies each provided us with inventories of their real property holdings. These inventories were provided in several different formats—including some compiled from SABHRS, some from the Orion/Cadastral database, and one set of scanned property deeds—which indicated that there is no standardized system for state agencies to track their real property holdings.

While some of the inventory lists were closer to matching the DNRC inventory than others, none lined up exactly. In each case there were inconsistencies between what DNRC indicated an agency owns and what the agency believes it owns. In some instances, we could determine that a similar parcel or parcels of land was being described, but the entries did not match—for example, a contiguous holding might include three entries in one inventory and be consolidated in one single entry in another.

Some examples of the discrepancies encountered when comparing the DNRC inventory with other agencies’:

- ◆ Department of Military Affairs: The DNRC inventory included 54 entries for this agency. The list provided by DMA included 26 real property holdings.
- ◆ Department of Environmental Quality: The DNRC inventory includes 63 entries with DEQ in the Agency column. The list provided by DEQ numbered 24 parcels.
- ◆ Department of Labor and Industry: The list provided by this agency was drawn from SABHRS and included separate listings for land, buildings, and improvements at a single address, so a comparison of the number of entries on this list vs. the DNRC list was not meaningful. Nonetheless, a review and comparison revealed inconsistencies between the two lists, including varying acquisition dates, properties that have been disposed of appearing on one list but not the other, and a question of ownership of the Walt Sullivan Building on Lockey Street in Helena.
- ◆ Department of Public Health and Human Services: The DNRC inventory had 99 entries for this agency, including multiple entries for locations like the State Hospital at Warm Springs and other institutions. The inventory provided by DPHHS was a spreadsheet with four pages, each for a different property: Warm Springs; the veterans’ home in Columbia Falls; Montana Developmental Center in Boulder; and a laundry facility in Lewistown. There were numerous inconsistencies between the two inventories. In some instances these inconsistencies appeared to date back to decisions to consolidate multiple agencies. The DNRC inventory also listed DPHHS as the administrative agency for properties in Cascade, Custer, Blaine, Dawson, Lewis and Clark, Madison, and Yellowstone counties, and the DPHHS list included no holdings in any of these counties.
- ◆ Department of Transportation: The DNRC inventory listed 5 Transportation entries, all related to the agency’s Billings District headquarters. The list of non-right-of-way holdings provided by MDT included 447 properties and was admittedly incomplete as the agency was still in the process of compiling its list. The MDT list does not include any right-of-way, but does include maintenance facilities, rest stops, stockpile sites, weigh stations, and the like. It’s important to note that state law exempts “lands used for highway rights-of-way and maintenance” from the DNRC inventory reporting requirement, but does require that MDT file with DNRC the ownership records of “state land held for administrative purposes.” In an interview, MDT officials

did not have a definition of “administrative” lands, but said that nearly everything they own is either a right-of-way or used for maintenance in some capacity. Nonetheless, there was practically no MDT real property in the DNRC inventory.

- ◆ Department Of Administration: The inventory provided by DOA was an inventory of buildings and tenants rather than an inventory of parcels of land, with some buildings included more than once if they are occupied by more than one agency, so it was more challenging than some other agencies’ to compare to the DNRC inventory. For instance, the block on which the Capitol sits constituted five entries in the DOA inventory—one entry for each building and two for the Capitol Annex (DOA and Justice). On the DNRC spreadsheet, 21 entries are listed as “Capitol Building and Grounds.” Overall, the DNRC spreadsheet included 114 entries with Administration as the administrative agency, while the DOA inventory listed 45 separate buildings (some of which, as noted, occupy the same parcel of land).
- ◆ University of Montana: The several campuses of the University of Montana consolidated their holdings into a single spreadsheet inventory prior to providing the information to us. Given the multiple campus locations, we sorted each list by county to make a comparison. Some selected examples of noted discrepancies include: a parcel purchased by Helena College UM in 2006 does not appear on the DNRC inventory; the UM inventory showed 10 properties in Beaverhead County (UM-Western) while the DNRC list showed 14; the UM inventory for Montana Tech (Butte) showed an entry for Yellowstone County for the Bureau of Mines and Geology, and the DNRC inventory did not include this holding.
- ◆ Montana State University: MSU responded to the inventory request by providing four separate files, one from each campus. Among our observations: Great Falls College MSU sent a series of scanned and barely legible property deeds; the DNRC list had no MSU property in Cascade County. In Hill County, the 2002 acquisition of the new chancellor’s residence at MSU-Northern does not appear on the DNRC list. Generally, the MSU inventory appeared to be more accurate than most, but there were small inconsistencies in most counties, including some that have agricultural stations but no college campuses.

With few exceptions, agency staff were unaware prior to our interviews of DNRC’s role as the keeper of an inventory of non-trust lands. Montana State University was aware of the DNRC inventory, and our staff contact there provided emails between MSU and DNRC from recent years as the agency worked to make sure its accounting of Montana State University real property was accurate. This was a rare situation among the agencies we spoke to, though—no others indicated much if any engagement with DNRC to work collaboratively on assuring the non-trust inventory is current and accurate. DEQ staff indicated awareness of the DNRC inventory statute but admitted that DEQ had not historically done everything it needed to do with regards to reporting acquisitions and disposals. At other agencies, there was no recognition whatsoever of DNRC’s statutory responsibility in this area.

## **Other Inventory Lists Compiled for Different Reasons, Are Not Consistent**

Part of this objective entailed collecting other lists of state-owned non-trust property. The question, asked of several agencies, of “Where would you go for a list of all state-owned non-trust property?” yielded several different answers.

One list was provided by the Risk Management and Tort Defense Division (RMTD), after officials at DOA said they believed that would be the most accurate list of non-trust real property. However, this list includes only property with buildings and other fixtures (sheds, etc.), and not undeveloped land. This makes sense because the division is concerned with insuring state property, and undeveloped land is insured in a different manner than buildings and other fixed assets. Buildings do count as real property, but the fact that open space was not included means this list is not a complete real property inventory.

Other sources suggested the SABHRS asset management function would provide a thorough and accurate accounting of state real property. However, given the inaccuracy of the DNRC inventory, it is unclear whether all state real property assets are reported in SABHRS. Also, staff with the departments of Labor and Industry and Public Health and Human Services indicated they used SABHRS to generate the inventories for their agencies that were used for testing elsewhere in this objective, and encountered some difficulties in manipulating the system to provide the requested list. Some general observations about using SABHRS as a comprehensive source of real property assets:

- ♦ From an accounting perspective, SABHRS could not be expected to contain every last parcel of real property, due in part to valuation thresholds used to determine when an asset is included in the system.
- ♦ Staff at two agencies admitted it was not an easy task to produce a real property inventory from SABHRS that was complete and not duplicative. Part of the challenge is that a piece of land and a building upon it would constitute two separate real property entries within the system, and any improvements to the property (a new roof, for example) would entail yet another entry for the same piece of real property. One agency’s limited inventory included at least two identifiable mistakes: It did not include a parking lot in Missoula that is owned by the agency, although this parking lot does appear on the DNRC inventory. Also, the agency inventory listed a property as having been disposed of, but in a subsequent interview, staff said the agency still owns the property. The problem, they said, likely stemmed from an initial entry error when the property was first put into the system. Subsequently, when the error was found and corrected, the original incorrect entry was changed to reflect that the asset was no longer owned, thus it showed in the system as having been disposed of.

We also developed an inventory of state-owned property from the Orion database maintained by the Department of Revenue. We first asked Department staff to provide a list to us of state-owned property, however, we were told that there are more than 300 possible names under which state property could be classified, which would make sorting the records difficult for agency staff. Our analysis of the records resulted in a list of 2,947 state-owned properties that are not trust lands. This figure does not match any of those from any of the other inventory lists we utilized in this objective.

The following table summarizes our observations of the various inventory lists we compared for this objective, and illustrates the differences between various lists maintained for different purposes.

Table 1 <b>Comparison of Various Real Property Inventory Lists</b>				
Source	DNRC	Orion	RM TD	SABHRS/ Banner
Number of Entries	2,603	2,947	4,096	3,007 (2,672+335)
Comments	The official state non-trust inventory as mandated by statute. This figure includes a number of properties that have been disposed of, as well as hundreds of entries labeled "Easement" that do not statutorily belong in the inventory.	Audit work involved condensing this list from the Department of Revenue property database for the entire state. Properties believed to be owned by the state were entered under more than 300 names.	Risk Management and Tort Defense provided its real property inventory, which focuses on buildings and other appurtenant structures and not vacant land.	These totals represent the number of "Land" entries in the asset management systems used by the state and the university system.

**Source: Compiled by Legislative Audit Division from various sources.**

## Property Taxes Paid on State Real Property

Once the aforementioned Orion accounting of state-owned exempt property was developed, we analyzed the tax codes assigned to each property, and found that some state lands were incorrectly assigned tax codes that are meant for taxable real property. We then checked with a county treasurer's office and confirmed instances of property taxes being paid by state agencies that should be exempt from these taxes. For one example, a state agency incorrectly paid property taxes of \$1,277 on a piece of land in 2014. For our purposes this indicated that the inaccuracy of the state's real property inventory leaves open the possibility of these types of errors.

Table 2 indicates the disparate ways in which one of the most basic real property holdings of state government (the State Capitol) is accounted for in various inventory lists. While none of these may be technically inaccurate, the difference in the way the same property is represented makes comparisons between inventory lists, and thus the efficient sharing of information and real property management strategy, difficult.

Table 2 Complex Capitol	
Inventory Source	Number of Entries for Block in Helena that Includes the Capitol
Orion/Cadastral	1 entry with legal description
SABHRS	5 entries, separated by agency occupying the four buildings on the block
DNRC Non-Trust Inventory	21 entries labeled "Capitol Building and Grounds"
Source: Compiled by Legislative Audit Division from various sources.	

**Non-Trust Inventory Does Not Match What Agencies Believe They Own, Other Inventory Lists**

Montana does not currently have a complete and accurate inventory of all non-trust real property owned by the state, and without such an inventory it is impossible to know how many parcels and how many acres of non-trust real property the state owns. As noted above, statute calls for DNRC to maintain this inventory, but staff acknowledge the inventory has not historically been a high priority, and staff at other agencies generally said they do not and have not worked with DNRC to make sure the inventory listings of their particular holdings are accurate. Across state government, the question of where to find an accurate inventory is answered by different people in different ways, and there is no agreed-upon source or format for a non-trust inventory, either across state government or for adherence by individual agencies. An accurate inventory of real property, including standardized data on location, property type, use, cost, and other characteristics, is the basis for a sound, comprehensive real property management strategy, and such a strategy is impossible to develop and implement without an accurate and current inventory.



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**RECOMMENDATION #1**

*We recommend the Department of Natural Resources and Conservation:*

- A. *Comply with statute and prioritize the completion and accuracy of its inventory of non-trust state real property.*
  - B. *Develop consistent language and identifiers for the inventory for use across state government.*
  - C. *Develop a process for working with other state agencies to ensure that the inventory is updated regularly and in a timely manner to reflect all future non-trust real property transactions.*
- 

### **Inventory as an Element of Centralized Real Property Management**

While Montana law requires the DNRC to maintain the inventory of state-owned non-trust land, this function does not align with the agency's primary mission. The inventory is currently the responsibility of DNRC's Real Estate Management Bureau. According to Administrative Rules of Montana, the bureau is "responsible for all activity on trust lands that is not classified as grazing, agriculture, or timber," including commercial and residential leasing, land sales, and right-of-way agreements. The Real Estate Management Bureau is a part of the Trust Land Management Division. According to ARM, the mission of the Trust Land Management Division is "managing the surface and mineral resources of forested, grazing, agricultural, and other classified state trust lands to produce revenue for the benefit of state public schools and other endowed institutions." These sentences from ARM speak to school trust lands, and do not include centralized non-trust real property inventory or other real property services for other state government agencies.

Current law requires that DNRC maintain an inventory of non-trust state lands, and the agency's shortcoming in this area led to our recommendation in this chapter. However, further audit work, to be discussed in the following two chapters, indicated that the keeping of such an inventory is a responsibility that could be transferred to an agency that routinely provides other centralized services to agencies across state government.





## Chapter III – Real Property Transaction Services and Oversight

### **Introduction**

Our goal in this objective was to determine whether agencies are regularly following applicable laws, rules, policies, and procedures in the acquiring and disposing of real property assets. Part of this objective included determining which entities provide ultimate oversight to real property transactions.

Over several decades, state government functions, and the real property assets needed to fulfill those functions, have grown and diversified. Early in the state's history, real property could be broadly characterized as school trust land, institutional (university/health/corrections) land, and limited lands in Helena for day-to-day administration. As state government has taken on additional functions and needs additional real property for various purposes, state law has done a mixed job of keeping up with providing for how that land is to be acquired, disposed of, and accounted for. Some distinct functions, such as highways (Montana Department of Transportation) and habitat (Department of Fish, Wildlife & Parks), have their own rules and procedures for real property. Others, like the separation of institutions into the Departments of Corrections and Public Health and Human Services, left some question as to how to facilitate real property transactions. Some transactions, involving agencies like the Department Military Affairs or Department of Labor & Industry, may involve federal funds and guidelines and thus must follow processes beyond those spelled out in Montana Code Annotated (MCA). Our review found some ambiguity in the guidance and oversight of real property transactions, but found that generally most steps identified as best practices are being followed.

### **Montana Code and Constitution Provide Varying Real Property Authority**

State-owned real property and the state acquisition and disposal of real property are referenced in numerous sections of the Montana Constitution and MCA. According to the Constitution, virtually all state lands possess some trust component or trust restriction—if the lands are not held in trust for schools or other specific beneficiaries, they are held in trust for the people of the state.

The Section of the Montana Constitution that establishes the Board of Land Commissioners (land board) grants the board authority over school trust lands, while a subsequent section authorizes the board to categorize state lands.

Other sections of the Constitution and MCA provide the Land Board with legal authority to approve of non-trust land transactions, and historically the Land Board has indeed approved transactions for lands not held for specific beneficiaries as well. According to §77-2-301, MCA, the board may determine when to sell land, and which lands to sell. Finally, another section of statute gives more specific authority to the board regarding sales in particular. Section 77-2-308, MCA, states all sales of state lands are subject to board approval.

The Constitutional establishment and membership of the board limits the board's authority to school trust lands. However, subsequent definitions of "state lands" and other sections of the Constitution and Montana Code broaden that authority to include virtually all state lands, whether held in trust for specific beneficiaries like schools, or held in trust generally for the people of Montana. The Constitution and MCA are not entirely consistent in their provision of authority to the Land Board, and even sections of MCA that seem to give the board broad authority over all state lands are at times worded as to be describing trust lands more than what we previously described as "administrative" (non-trust) lands owned by the state.

### **Agencies Have Varying Levels of Real Property Authority**

Beyond the general authority over state lands held by the Land Board, several other agencies and entities have various measures of property authority that may or may not involve Land Board notification and permission. Following are several examples of Montana Code addressing real property authority and responsibilities for certain state agencies and institutions.

The statutory definition of State lands excludes lands held or administered by the Board of Regents. However, while the Board of Regents does have authority to make real property decisions, sales must still include certain steps and still must be approved by the Land Board. In particular, the Board of Regents may not sell school trust land; must obtain full market value for any property sold; must provide public notice of the sale and give the public a chance to comment; must advertise the sale and give the public an opportunity to bid on the sale; must obtain the concurrence of the Land Board before selling; and must comply with the Montana Environmental Policy Act and Montana antiquities laws.

Several other state agencies are governed by real property statutes specific to that agency, which either provide for a role in the acquisition or disposal of real property, or which provide guidelines for the agency to follow in the area of real property transactions. Following are some examples.

**Department of Administration:** The agency that handles most centralized services for state government has some responsibilities in the area of real property transactions. Specifically, §2-17-101, MCA, says DOA is to approve of all real property acquisitions by state agencies. In an interview, DOA staff acknowledged the presence of this requirement but said they do not, as a matter of course, approve real property acquisitions by other agencies. They read and interpret §2-17-101, MCA, as dealing primarily with leasing, even though it does address acquisitions of real property as well.

**Department of Environmental Quality (DEQ):** Most DEQ acquisitions are for the purpose of remediating environmental degradation, a purpose unique to the agency. The agency cites several sections of MCA they use in determining when and/or whether it needs to seek approval of the Land Board before acquiring property. According to DEQ legal staff, the agency interprets §75-10-701 (20), MCA, in particular citing the definition of “remedial action” and the inclusion of “acquisition,” as providing it with authority to acquire real property without approval of the Land Board, and also to acquire property for more than fair market value as circumstances warrant. For example, during file review we did not note appraisals for any of the property acquired in the Silver Bow Creek area that was part of a larger environmental settlement.

However, if remedial action is taken through the Abandoned Mine Lands Program, according to §82-4-239, MCA, the agency needs Land Board approval for acquiring property, even if it is a gift. DEQ legal staff indicated this Land Board requirement was put into place after the legislature was unhappy with the price paid for a reclamation site in Belt. Thus, within a single agency there exist different sets of rules for similar processes with similar goals.

**Department of Military Affairs (DMA):** In addition to Montana Code, DMA’s acquisitions and disposals, which primarily involve property for armories and readiness centers around the state, are subject to a number of federal guidelines that are outside the scope of this audit. DMA staff indicated that in the process of real property transfers they work closely with DNRC staff for acquisitions and disposals. Section 10-1-108, MCA, allows the agency to keep the proceeds from its armory sales, to be put toward a new facility.

By contrast, if specific authority for sales proceeds does not exist (as it does for DMA), the cash generated by real property sales is deposited in the general fund and can not be spent without legislative appropriation. This restriction on the use of real property sale proceeds was cited by DOA staff as being a disincentive for agencies to sell real property, as there is no guarantee the agency can apply the proceeds to another project.

**Montana Department of Transportation (MDT):** MDT has some unique powers in the area of real property acquisition and can make acquisitions without approval of the Land Board. It also can acquire property that it considers “reasonably necessary” for present or future highway purposes and can acquire more land than it needs for right-of-way in certain situations, declaring the excess a remainder.

In an interview with MDT staff, we learned that its backlog of excess property stretches several years, and while the agency does have authority to proactively dispose of unneeded lands, in fact its current workload consists primarily of working with parties who have proactively contacted MDT with interest in purchasing real property.

On the disposal side, MDT has a number of guiding statutes as well. Unless being sold to another public entity, property must be sold at public auction (if worth more than \$10,000) and fair market value must be attained. Notification and other restrictions apply as well.

Generally, MDT statutes are more clear and specific than those guiding other agencies in the area of real property acquisition, disposal, and management. However, there is some lack of clarity regarding the concept of “administrative land” and what MDT property that definition includes.

**Department of Fish, Wildlife & Parks (FWP):** FWP is the largest owner of non-trust state land, the vast majority of which is part of Habitat Montana or other conservation or access programs and not related to the day-to-day operation of state government. FWP has authority to acquire property of not more than 100 acres and costing no more than \$100,000 with approval only from the Fish and Wildlife Commission; Land Board approval is not necessary for acquisitions up to that size. The agency must meet several other requirements regarding public notice, notice of other public officials, and other stipulations.

## **Former Institution Real Property**

The Land Board must consult with the “appropriate legislative committee” (determined to be the Legislative Council) prior to the sale of any former institutional lands. Additionally, the Land Board must consult with the Legislative Council when selling land to, or exchanging land with, another public entity. The Legislative Council does not appear to have any authority to approve or deny any transactions that are required to come before it. The Legislative Council has rules regarding this review process.

## **Review Shows Agencies Conduct Transactions Differently**

As part of this objective we reviewed transaction (acquisition, disposal, and exchange) files from the past 10 years for the eight agencies selected for further study in Objective one. The agencies themselves were the main source of information for an accounting of lands they had acquired or disposed of in that time period. Our review included 30 acquisitions, disposals, and transfers of real property.

Because MCA references real property in so many different sections of law, determining what steps are mandatory for agencies to take in the buying and selling of real property was challenging. In our review we did not note any transactions that appeared to be missing any key elements—appraisals, environmental reviews, Land Board approvals, and appropriate public notice (where applicable) were all in order. However, due to the lack of a centralized process for real property transactions as well as the lack of a singular defined process, it was not clear that every necessary step was taken in each instance.

It's also important to note that many agencies have requirements particular to that agency when acquiring or disposing of real property that are beyond Montana Code and Administrative Rules. For example, in acquiring property in Lewistown for a satellite campus, MSU-Northern took advantage of a federal grant program to acquire the space for free, but is required to regularly affirm that it is still being used for educational purposes. As another example, Department of Labor property may have been purchased with federal funds and thus have strings attached for a certain period of time prior to being able to be disposed of freely. Other agencies face similar restrictions.

Some observations from our review of these 30 real property transactions show agencies are not entirely consistent:

- ♦ Department of Military Affairs identified a piece of property in Malta for a new readiness center, but its initial appraisal, performed by a Missoula firm, did not return a value commensurate with what the owner was asking for the property. In an internal memo, staff indicated a desire to get another appraisal, along with an indication that DNRC staff said the agency could get as many appraisals as it wanted. Subsequently, an eastern Montana appraiser appraised the property at a much higher value. In fact, the second appraisal came in significantly higher than the file indicated the owner was first asking for the property, and the property was eventually bought for the amount indicated by the second, higher, appraisal. (The note indicated that this second appraisal included the supposition that the property would be annexed and would have city services and it's unclear whether the initial appraisal accounted for this expected connection.)

- ♦ UM-Western sought from Department of Revenue a property tax exemption when it acquired a lot adjacent to campus, and staff told us they believed it was necessary to ask for this exemption. No other agencies showed evidence of seeking this exemption, and Revenue staff told us the exempt status should be applied to the property by Revenue via application of a new tax class status when a parcel becomes state-owned, and the application is not necessary. One other agency (Helena College UM) had an exemption application form in the file for an acquisition, but the form was blank and there was no indication the agency actually applied for the exemption.
- ♦ When the Department of Labor was trying to sell an empty lot in Billings and was soliciting public comment on the sale and the environmental impact analysis, the public notice directed public comments on these issues to DNRC. This indicated DNRC was taking an active role in facilitating a real property transaction for another state agency, a service DNRC staff admits it provides on an ad hoc basis.
- ♦ The Military Affairs disposal of its armory property in Kalispell (2006) was not well documented. This was a reversion of the property from the state back to the City of Kalispell, and DMA staff said the documentation is on file at DNRC. Statutes require this documentation is to be maintained at the agency office and not with the DNRC inventory files.
- ♦ There were no appraisals evident for any of the DEQ acquisitions. As noted above in the discussion of statutory authority to acquire real property, staff indicated fair market value is not a limiting consideration when the agency acquires property for remediation purposes. The DEQ acquisitions we investigated were part of a larger settlement with ARCO and did not involve cash payments by the state.
- ♦ The file for Montana Tech's purchase of a building in Billings for the Bureau of Mines and Geology included a letter from the governor approving the purchase and citing §18-2-102(2)(c), MCA. However, that statute indicates the Board of Regents and governor can authorize the *construction* of a building financed with federal and/or private funds provided the construction does not result in any new programs. (Emphasis added.) This purchase was funded in a way that is consistent with this statute (combination of federal and private university funds), but this was a purchase of an existing building and not new construction, so it's unclear whether gubernatorial approval was appropriate or needed.
- ♦ For one MSU Northern transaction, a memo from legal staff at MSU in Bozeman to MSU Northern indicated that the Land Board would require two appraisals, public notice, Regents approval, compliance with MEPA, and antiquities law.

## **FWP Transactions**

Because FWP completes many land transactions and has an extensive portfolio of real property, we determined a review of a sample of these transactions was necessary. The purpose of this review was two-fold: To provide assurance that the agency is following statute and rules when it buys land; and as a potential source of criteria for



other agencies to consider when they conduct real property transactions. Compared to other agencies dealing in non-trust real property, FWP does have a more defined and standardized process for real property transactions. The agency maintains checklists for real property transactions, both leading up to approval of the Fish and Wildlife Commission to pursue the transaction, and after the approval has been secured and the transaction process is underway. Completed checklists were found in the two more recent transaction folders reviewed; because the checklists are relatively new, two older transactions that were reviewed did not include them.

### **No Standardized Real Property Transaction Process**

No standardized process exists for the buying and selling of real property across all of state government, and certain agencies, typically those with unique real property management responsibilities, are provided more specific statutory guidance than others. At agencies that do not conduct many real property transactions, or where real property management is not a core function of the agency, staff are sometimes, understandably, in need of guidance regarding the process and steps necessary to complete an acquisition or disposal. There does not appear to be existing authority within Montana Code or Administrative Rules for a particular agency to provide the centralized function of real property transaction services for other state agencies.

In the absence of any central authority, staff at the Department of Natural Resources and Conservation said they often help other state agencies with non-trust real property transactions. Nothing in statute or rules requires DNRC to provide this service, and DNRC does not have staff formally dedicated to providing this centralized service to other agencies and does not bill other agencies for this service. Staff said they help other agencies acquire and dispose of real property because they are the agency that supports/staffs the Land Board, and with real property transactions going before the Land Board, DNRC wants to ensure its processes are properly followed before presenting the transactions to the board for consideration.

When agencies approach DNRC for help with real property transactions, DNRC staff provides a checklist of items that should be completed leading up to the acquisition or disposal. However, staff indicated that the checklists are based on DNRC's practices when acquiring and disposing of the trust lands it manages, and do not necessarily reflect any guidelines or requirements that may be specific to other agencies. DNRC provides the checklist to other agencies with the caveat that the checklist may not include everything that is required, particularly any requirements unique to that agency.

## Other States Provide More Centralized Real Property Transaction Services

Audit work included interviews with real property offices in several other states to determine how their transactions are administered. In Colorado, Utah, and Oregon, a centralized real estate office is part of the state's department of administration or equivalent agency. Further, these offices typically handle all space needs for other administrative agencies, whether leasing or purchasing real property. In all three cases, the leasing side of the department handles a larger share of the office's efforts and resources. Some relevant takeaways from our interviews with other states regarding real property transactions:

**Colorado:** The Manager of Real Estate Programs told us that agencies have authority to conduct their own real property transactions, but typically lack the knowledge of the process and so rely on the Real Estate office staff for guidance and assistance.

**Utah:** The Real Estate and Debt Manager told us that Real Estate handles transactions for most but not all state agencies. Higher Education, Transportation, and part of the Department of Natural Resources are allowed to work on real estate transactions autonomously without the help of the Real Estate Group. Other agencies use the Real Estate office for services ranging from buying land to putting out a bid for a state-owned building or working with a landlord on a lease. For example, the Department of Human Services does not have the ability to go out and request proposals or enter into agreements on its own to buy or lease property.

**Oregon:** The Real Estate Services Manager said the office handles real property transactions for most state agencies and provides all the services that might be expected of a broker or landlord when it comes to buying, selling, or leasing space.

Typically in Montana, internal services that are provided by one agency to other state agencies are the domain of the Department of Administration. Montana Code indicates that no agency may acquire real property without the approval of the Department of Administration. But staff at DOA said they do not provide this approval and do not know what form such approval would take. In Montana, leasing is handled through the Department of Administration, but the office that handles leasing has little to do with the process for acquiring and disposing of real property assets for other state agencies.



## **Centralized Real Property Transaction Services Would Benefit Property Management Efforts**

The Constitution's establishment of the Land Board provides the board's oversight of decisions about school trust lands, and Montana Code gives the Land Board a role in approving non-trust transactions as well. Through file review we found no definitive evidence that real property transactions are being conducted outside of the guidelines and requirements of Montana Code, and the most basic elements of these transfers appear to be taking place as required. However, there is little to no formal, defined process for various executive branch agencies to follow when a decision is reached to buy or sell, outside of one-size-fits-all checklists developed by the DNRC and based upon the process DNRC follows for its transactions of trust land. DNRC will provide guidance and assistance to other agencies on an ad hoc basis when land is being sold, but this is an informal process for which DNRC has no statutory authority or responsibilities. Typically, centralized services provided within state government by one agency for another are the domain of the Department of Administration.

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### **RECOMMENDATION #2**

*We recommend the legislature evaluate the need for a centralized real property transaction function, to facilitate and oversee the processes for acquiring, disposing of, and transferring real property on behalf of agencies that do not have such management authority under existing state law.*

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## Chapter IV – Real Property Management Strategy

### Introduction

The previous audit objective examined the mechanics of real property transactions. For this subsequent objective, we broaden our focus to determine what elements of real property management strategy exist in Montana state government, and whether improvements might be made to increase the efficiency and effectiveness of the state's real property management strategy.

Strategic assets are defined as assets needed by an entity in order for it to maintain its ability to achieve future outcomes. In Montana, real property is a tangible, strategic asset, with single holdings being worth hundreds of thousands if not millions of dollars, and the state's entire portfolio worth many times that. As such, industry best practices indicate it is an asset that should be managed in a proactive fashion. Effective real property management can add value to the state's holdings, lead to more efficient use and occupancy by state agencies, and give the state a better grasp on when to buy, sell, hold, or lease to satisfy its real property needs.

As noted in Chapter II, Montana does not have a reliable inventory of all of its non-trust real property holdings. This shortcoming hinders the state's ability to develop a management plan for all of its real property holdings. Further, the agency charged with maintaining this inventory—Department of Natural Resources and Conservation (DNRC)—has no authority, statutory or otherwise, to manage non-trust real property owned by the state, or to help make decisions on whether acquisitions or disposals by various state agencies would be appropriate.

Montana Code also does not provide authority or a process for determining when a piece of real property can be disposed of. This is in contrast to personal property (vehicles, office equipment, etc.), for which there is a more defined process and dedicated staff.

According to an audit of real property management at a federal corporation, the lack of a comprehensive real property management information system can leave an agency or entity vulnerable to:

- ♦ Higher than necessary operating and maintenance costs for underutilized and/or unnecessary real property.
- ♦ Higher than necessary leasing expenditures through lost opportunities to consolidate underused space.

- ♦ Lower revenues for unidentified land and facilities available for sale or lease to other entities.

The same report indicated that best practices call for assigning a single office responsibility for developing and maintaining a real property inventory management system.

Interviews across many agencies throughout this audit revealed inconsistency in agencies' understanding of real property procedures; unawareness of responsibilities belonging to various agencies in the areas of inventory maintenance and real property transactions; and a general lack of planning, cooperation, and efficiency in the area of long-term property management. Audit work determined that assigning better defined real property management authority to the Department of Administration could centralize the function in an agency that already provides multiple property-related central services to other state agencies, in addition to pairing the function with the leasing of space for state government, a function the agency already performs capably.

### **Other States Centralize Property Management Functions**

We interviewed real estate staff in three other states (Colorado, Oregon, and Utah) regarding statewide real property management. While recognizing that each state has unique needs and priorities and that not all states handle real property management in the same way, these three Western states all share similarities with Montana that make comparisons appropriate, including relatively small populations and vast public land holdings with significant trust land functions.

In each case, the state's real estate office is located within the Department of Administration or equivalent centralized services agency. Also, in each case the real estate office is responsible for procuring real property that is both owned by the state and that is leased by state agencies, providing a more comprehensive and thorough approach to real property management and assessment of agency space needs. Some of our observations from these interviews:

- ♦ In all three states it is not uncommon for certain state agencies with unique missions to have authority to buy and sell property without the guidance of the state's real estate office. Transportation, for instance, typically has this authority for certain types of land, along with the body that oversees each state's trust lands. However, the more typically administrative/bureaucratic agencies are usually directed to the real estate services office for real property transactions of all types.
- ♦ In all three states, staff said that being responsible for leasing as well as buying and selling real estate provided them with a thorough picture of the state real property portfolio as well as agency space needs. Staffing in the three offices varied from two to 15 employees, and in each case the managers told us leasing makes up by far the largest share of the office's workload.

- ♦ Staff in all three states indicated frustration with what they view as over-reliance on leases when analysis shows that purchasing real property may be more cost-effective in the long run. Because these offices work with agencies on both leasing and acquisition of real property, they are better situated to manage a real property inventory and make determinations on the advantages and disadvantages of leasing versus buying.

### **Existing Evidence of Some Real Property Management Strategy**

In Montana, the Department of Administration already handles real property leasing for state agencies in need of office space. It is not clear in statute how far the department's responsibilities extend in the area of management of real property owned by the state. The agency is in charge of leasing space for other state administrative agencies, but has limited statutory authority for management of real property owned by the state. Generally, DOA claims authority for real property management within 10 miles of the Capitol, but even within this limit there are several exceptions. Statute also provides Administration with the authority to approve real property purchases by other agencies.

Audit work did find instances of Administration working in varying capacities with other agencies on questions of real property management. For example, staff at the Department of Labor said Administration worked with the agency on an assessment of space utilization as Labor looked to consolidate its workforce from several buildings in and around Helena. And at MSU-Northern, when the college was determining whether to repair a foundation issue with the chancellor's residence or simply buy another residence. The prospective fees that would be charged by the Architecture and Engineering Division for work on the repair pushed the university to instead buy a new property for the chancellor.

There are also various documents and plans that guide the real property management and development of agencies and geographical areas, some of which include:

- ♦ The Long-Range Building Program, which details agency operations and maintenance needs for the legislature each biennium. This program is the vehicle through which the Architecture & Engineering Division assists agencies in the design and construction of facilities, repairs and alterations of existing facilities, and planning for future governmental and university system needs.
- ♦ The Capitol Complex Master Plan, which guides development around the Capitol in Helena.
- ♦ Board of Regents-approved "acquisition zones" around several (but not all) university campuses, giving the universities pre-authorization to acquire

properties up to a certain cost in an expedited fashion in areas adjacent to campus identified as appropriate for growth.

- ♦ Risk Management and Tort Defense Division provides insurance coverage for all of the state's holdings and relies on an accurate real property inventory to determine the amount and type of coverage needed.

### **More Centralized, Comprehensive Management Strategy Would Benefit the State**

Montana Code already provides some authority and some guidance to the Department of Administration for a comprehensive real property management approach to state administrative real property. Some of this authority is being exercised, while other aspects of it are not. Also, because different elements of real property management in Montana are handled by different agencies, a cohesive and comprehensive strategy becomes more difficult to implement. With the non-trust inventory currently the responsibility of DNRC, leasing overseen by Administration, and other agency acquisitions and disposals handled by DNRC on an ad hoc basis, as well as the Department of Environmental Quality in charge of the management practice of energy efficiency, responsibility for real property management is shared across several disparate state agencies. This may lead to inefficient use of real property as well as untimely decisions to re-purpose or dispose of underutilized or surplus real property.

Several of the existing statutory elements of a real property management strategy, including the maintenance of an inventory and various long-range planning requirements, have been in place for many years.

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#### **RECOMMENDATION #3**

*We recommend the legislature evaluate the need for a centralized, statewide real property management strategy covering all real property assets used by various agencies for the day-to-day administration of state government, including responsibility for maintenance of the existing inventory of non-trust real property.*

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### **Reporting on all Space, Leased and Owned**

As noted elsewhere in this report, Montana does have indications of a statewide real property management strategy in statute. Largely in the area of administrative operations of the state, there are statutes that point to the Department of Administration as being responsible for overseeing the space needs of most agencies involved in the day-to-day

functioning of state government. In particular, DOA is charged with approving all acquisitions of real property by state agencies. It should be noted that this approval function appears in a section of code dealing with office space (§2-17-101), and is read to be generally referring to office space and similar needs, and not real property necessary for other functions like right-of-way, wildlife habitat, etc.

The same section of Montana Code requires the Department of Administration to provide a biennial report to the office of budget and program planning and the legislative fiscal analyst, detailing the amount, nature, and location of all space currently utilized by state agencies (universities excepted). Such a report would provide a thorough summary of all the space used by state agencies and would be a valuable tool for long-range planning, discovering potential synergies between agencies, identifying property that may be surplus to the current needs of state government, and other elements crucial to the development of a real property management strategy.

Audit work included a review of the most recent edition of this space utilization report. We found that the Department of Administration is providing a thorough accounting of all space *leased* by state agencies in cities across Montana, but the report did not include any property *owned* by the state and used by state employees. In an interview, DOA staff acknowledged that the report included only leased space. Staff indicated that in their view, the statute requiring an accounting of state agency space utilization was enacted due to issues with a particular leasing deal negotiated by the agency, and that leasing is solely what the legislature is interested in. However, the statutory requirement is for all space, owned and leased, to be reported on.

In the context of a control environment, reporting information about all space used by state agencies is an important element of a sound control structure supporting the state's real property assets and management. Provided with the authority to report on the state's space utilization in its entirety, and not just leased space, the Department of Administration has an opportunity to present a full and accurate picture of the space needs across state government, and to develop a management strategy for the more efficient and effective use of that space, whether it is leased or owned. Taken in combination with the previous recommendation regarding a centralized approach to real property transactions of non-trust lands and associated responsibilities, fulfilling its statutory obligation in the area of space utilization reporting would help the agency provide to stakeholders a more accurate picture of real property holdings and management, and provide greater opportunity for more efficient and effective use and surplus of state real property.

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**RECOMMENDATION #4**

*We recommend the Department of Administration comply with statute by including space occupied by state agencies in state-owned buildings in its biennial report on space utilization.*

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DEPARTMENT OF  
NATURAL RESOURCES  
AND CONSERVATION

DEPARTMENT OF  
ADMINISTRATION

DEPARTMENTS' RESPONSE



# DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

## Trust Land Management Division



STEVE BULLOCK, GOVERNOR

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TELEFAX NUMBER (406) 444-2684PO BOX 201601  
HELENA, MONTANA 59620-1601

July 20, 2015

Tory Hunthausen, Legislative Auditor  
Legislative Audit Division  
State Capitol Building, Room 160  
PO Box 201705  
Helena, MT 59620-1705

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JUL 24 2015

LEGISLATIVE AUDIT DIV.

**RE: Response to Recommendations from Performance Audit of State Real Property Management  
from June 2015.**

Dear Ms. Hunthausen,

Below is the Department of Natural Resources and Conservations response to the four recommendations made in the audit report on State Real Property Management:

### Recommendation #1

We recommend the Department of Natural Resources and Conservation:

- A. Comply with statute and prioritize the completion and accuracy of its inventory of non-trust state real property.
- B. Develop consistent language and identifiers for the inventory for use across state government.
- C. Develop a process for working with other state agencies to ensure that the inventory is updated regularly and in a timely manner to reflect all future non-trust real property transactions.

### ***DNRC response to Recommendation #1A:***

### ***Partially Concur***

*DNRC has complied with statute by working to the extent feasible with available funding, to establish and maintain an inventory of state –owned land along with a corresponding repository of ownership records. Funding for personal services and operations costs is inadequate to maintain the inventory and repository; and to work to perfect title to state properties as necessary. DNRC will prioritize working on the completion and accuracy of the non-trust inventory, within the limits of available funding.*

**DNRC response to Recommendation #1B:****Concur**

*Previous DNRC staff assigned to work on the non-trust inventory had not developed standardized procedures for keeping the inventory and repository updated and accurate. As turnover in staffing has occurred over time, the lack of documented procedures has caused the inventory to suffer. DNRC staff is currently developing procedures to guide maintaining both the inventory and repository.*

**DNRC response to Recommendation #1C:****Concur**

*DNRC staff will develop procedures and forms for both DNRC and other state agencies to use for updating and maintaining both the inventory and repository. Once procedures are developed, DNRC will meet with other state agencies with non-trust lands to implement the procedures for keeping the inventory and repository accurate and up to date.*

**Recommendation #2**

We recommend the legislature evaluate the need for a centralized real property transaction function, to facilitate and oversee the processes for acquiring, disposing of, and transferring real property on behalf of agencies that do not have such management authority under existing state law.

**DNRC response to Recommendation #2:****NA**

*It is beyond the Departments scope of authority to respond to this recommendation.*

**Recommendation #3**

We recommend the legislature evaluate the need for a centralized, statewide real property management strategy covering all real property assets used by various agencies for the day-to-day administration of state government, including responsibility for maintenance of the existing inventory of non-trust real property.

**DNRC response to Recommendation #3:****NA**

*It is beyond the Departments scope of authority to respond to this recommendation.*

**Recommendation #4**

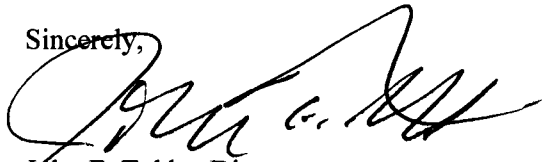
We recommend the Department of Administration comply with statute by including space occupied by state agencies in state-owned buildings in its biennial report on space utilization.

***DNRC response to Recommendation #4:***

***NA***

*It is beyond the Departments scope of authority to respond to this recommendation.*

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Tubbs', written over a horizontal line.

John E. Tubbs, Director

Montana Department of Natural Resources and Conservation





# MONTANA DEPARTMENT OF ADMINISTRATION

*"the backbone of state government"*

## Director's Office

Steve Bullock, Governor • Sheila Hogan, Director

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JUL 14 2015

LEGISLATIVE AUDIT DIV.

July 13, 2015

Ms. Tori Hunthausen  
Legislative Auditor  
State Capitol Building, Room 160  
Helena, MT 59620

RE: Audit 14P-07 State Real Property Management

Dear Ms. Hunthausen:

Thank you for the opportunity to respond to the State Real Property Management performance audit. I appreciate the work your staff did in completing this audit.

Following is the Department of Administration's response:

### **Recommendation #4**

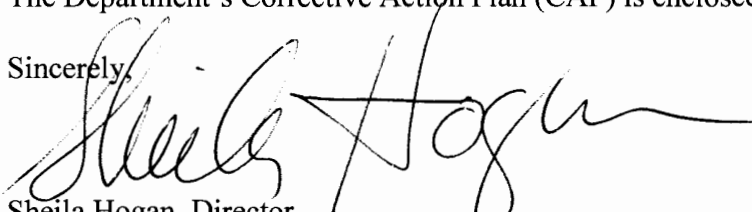
We recommend the Department of Administration comply with statute by including space occupied by state agencies in state-owned buildings in its biennial report on space utilization.

### **Department Response:**

Concur. We will include information on the state-owned space in our next report to the office of budget and program planning and the legislative fiscal analyst by September 1, 2016 as required by section 2-17-101, MCA.

The Department's Corrective Action Plan (CAP) is enclosed.

Sincerely,

  
Sheila Hogan, Director  
Department of Administration

Enclosure

**Corrective Action Plan (CAP): Audit Report # 14P-07**  
**State Real Property Management**  
**Department of Administration**  
**July 2015**

Agency	Recommendation #	Does this affect a federal program?	CFDA # (if previous YES)	Management View	CAP – Corrective Action Plan	Person responsible for CAP	Target Date
61010	#4. We recommend the Department of Administration comply with statute by including space occupied by state agencies in state-owned buildings in its biennial report on space utilization.	No	N/A	Concur	Information regarding state-owned space will be added to our next report to OBPP and LFA as required in 2-17-101, MCA.	Steve Baiamonte	September 2016